IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.783 OF 2004

Krushnath Ranoji Ranasubha .. ..Appellant
Versus
Swati Vijaykumar Asagekar and Ors. ..Respondents

Shri P.K.Dhakeplhalkar for appellant
Mr.G.S.Godbole with Shri S.S.Kanitkar for respondents

CORAM : P.V.KAKADE, J.

DATE : 18TH OCTOBER, 2005.

P.C.:

1. Heard both sides.

2. By consent it is hereby directed that the judgment and Order dated 19.12.2001 passed by the learned Joint Civil Judge, Senior Division, Solapur in Regular Civil Suit No.221 of 2001 (Old Special Civil Suit No.128 of 1993) is confirmed by the judgment and decree dated 13.1.2004 passed by the learned IInd Ad-hoc Addl. District Judge, Solapur in Civil Appeal No.48 of 2002 which are impugned in the present Second Appeal are hereby modified to the extent indicated herein.

3. It is ordered that the Sale Deed dated 2.9.1986

executed by late Shri Vijaykumar Asagekar in favour of the appellant will be valid and binding only to the extent of the share of late Shri Vijaykumar Asagekar in the suit property namely City Survey No.1304, North Kasba, Solapur and it is agreed by the parties that late Shri Vijaykumar Asagekar had 1/6th share undivided share in the said property.

4. There will be a Decree for partition and separate possession of the aforesaid 1/6th undivided share. However, all suits which are filed by the Appellant against the tenant in the said property shall be withdrawn.

5. The partition of the suit property will be effected in the following manner:

(a) By appointing of a Court Commissioner.

. In this regard it is further directed that the learned Civil Judge, Senior Division, Solapur shall expedite the execution in the manner recorded as above in order to partition and give separate possession of the aforesaid 1/6th undivided share. It is clarified

that since the extent of the property is relatively small and if it is not found practicable to meets partition by metes and bounds, then the learned trial judge shall be empowered to invoke the provisions of the Partition Act so as to give full effect to the decree passed herein. With this direction the appeal stands disposed of with no order as to costs.

. Consequently Civil Application No.875 of 2004 also stands disposed of with no order as to costs.